

REMARKS

This is in response to the Office Action of September 30, 2008 (an accompanying Request for a Three Month Extension of Time makes this response timely).

In the Office Action, the Examiner pointed out that the specification omitted an Abstract of the Disclosure. A suitable Abstract of the Disclosure is supplied herewith.

Claims 1-74 were provisionally rejected on the grounds of non-statutory double patenting over claims 1-200 of Application Serial No. 10/432,250 (the co-pending application). The Office Action indicated the rejection was provisional since no conflicting claims had been patented.

The claims now in this application include method claim 1 and its dependent claims 2-37, system claim 38, and its dependent claims 39-74 and four newly presented claims, including system claims 75 and 76 and method claims 77 and 78.

New claims 75-78 are fully supported by the application. In respect of the recitation in the new claims to the effect that “the determined outcome is a core outcome with respect to the received bids” note the disclosure in this application at pages 4, 23 and 62-64.

The rejection was based on the allegations that the “subject matter claimed in the instant application is fully disclosed in the referenced co-pending application” and that “the referenced co-pending application and the instant application are claiming common subject matter.” The allegation that the applications are claiming common subject matter was predicated on the allegation that “claims 1-74 of the pending application.. is the same method for intended use as claims 1-200 of co-pending application...” The Office Action recognized that there is a limitation to a “dynamic auction” in this application but it is alleged that “all the other limitations in claim 1 are the same as claims 1-200” of the co-pending application. The Office Action concluded by indicating that “there is no apparent reason why applicant would be prevented from presenting claims corresponding to those in the instant application in the other co-pending application.”

Claims 1-200 in the co-pending application have been cancelled. The claims presently pending in the co-pending application include 24 independent claims, including the following system claims:

Independent Claim 201 and dependent claims 202-206;
Independent Claim 213 and dependent claims 214-223;
Independent Claim 235 and dependent claims 236-243;
Independent Claim 253 and dependent claims 254-262;
Independent Claim 273 and dependent claims 274-282;
Independent Claim 293 and dependent claims 294-300;
Independent Claim 309 and dependent claims 310-316;
Independent Claim 325 and dependent claims 326-332;
Independent Claim 341 and dependent claims 342-345;
Independent Claim 351 and dependent claims 352-366;
Independent Claim 383 and dependent claims 384-389; and
Independent Claim 397 and dependent claims 398-400 and 429-440.

The co-pending application also includes method claims, including:

Independent claim 207 and dependent claims 208-212;
Independent claim 224 and dependent claims 225-234;
Independent claim 244 and dependent claims 245-252;
Independent claim 263 and dependent claims 264-272;
Independent claim 283 and dependent claims 284-292;
Independent claim 301 and dependent claims 302-308;
Independent claim 317 and dependent claims 318-324;
Independent claim 333 and dependent claims 334-340;
Independent claim 346 and dependent claims 347-350;
Independent claim 367 and dependent claims 368-382;
Independent claim 390 and dependent claims 391-396; and
Independent claim 401 and dependent claims 402-404 and 441-452.

The co-pending application also includes computer readable medium claims, including independent claim 453 and dependent claims 454-468.

In response to a restriction requirement in the co-pending application applicant elected, with a traverse of the restriction requirement, “the claims of group X (397-404)” and suggested “that claims 351-382 (group VIII) be examined as well.”

Applicant traverses the rejection for the following reasons.

The claims in this application are different from the claims in the co-pending application. No reason has been advanced to suggest that the claims in the application could be considered obvious in light of the claims in the co-pending application.

With respect to claims 1-74, there is a clear line of demarcation between the claims in this application and the claims in the co-pending application. That clear line of demarcation is based, at least in part, on subject matter of claims 1-74 which is not claimed in the co-pending application. Method claims 1-37 specify “the auction including a dynamic auction phase followed by a later phase” and include a specific step of “changing from the dynamic auction phase to the later phase, following a determination not to continue the dynamic auction phase.” System claims 38-74 specify “the auction including a dynamic auction phase followed by a later phase” and include “means for changing from the dynamic auction phase to the later phase, following a determination not to continue the dynamic auction phase.” There is no such subject matter in any of the claims of the co-pending application.

New claims 75-76 specify “means for processing the received bids to determine an outcome comprising an allocation of the items among the bidders and payments associated with the bidders, wherein the determined outcome is a core outcome with respect to the received bids.” New claims 77-78 call for “processing the bids using the first computer to determine an outcome comprising an allocation of the items among the bidders and payments associated with the bidders, wherein the determined outcome is a core outcome with respect to the received bids.” This subject matter is not found in any of the claims in the co-pending application.

In the absence of an allegation to the effect that any claim in this application is obvious over a claim now pending in the co-pending application applicant believes the rejection is flawed.

On the foregoing basis, Applicant traverses the rejection and requests reconsideration and withdrawal of the rejection and allowance of the application.

CONCLUSION

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

A three-month extension of time fee is due with this response. The Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 22-0185, under Order No. 22209-00004-US2 from which the undersigned is authorized to draw.

Dated: March 30, 2009

Respectfully submitted,

Electronic signature: /Stanley B. Green/
Stanley B. Green
Registration No.: 24,351
CONNOLLY BOVE LODGE & HUTZ LLP
1875 Eye Street, NW
Suite 1100
Washington, DC 20006
(202) 331-7111
(202) 293-6229 (Fax)
Attorney for Applicant